

GOVERNOR'S MESSAGE.

THE SPEAKER

Laid before the House the following message from his excellency, the Governor:

STATE OF TEXAS,
EXECUTIVE OFFICE,
AUSTIN, March 31, 1887. }

Hon. Geo. C. Pendleton, Speaker of the House of Representatives

I hereby respectfully return to the House in which it originated, bill No. 130, entitled:

"An act to amend Article 431, chapter 3, title 7, Code of Criminal Procedure of an act to adopt and establish a Penal Code, and a Code of Criminal Procedure of the State of Texas," passed February 21, 1879.

In the performance of this duty prescribed by the Constitution, and in presenting my objections to the bill, I have been compelled to overcome the reluctance with which I dissent from the conclusions of your honorable bodies, and present my own opinions in opposition to the action of a co-ordinate branch of the Government which possesses so fully my confidence and respect.

It occurs to me that the bill is violative of the spirit of the constitution. The issuance of attachments for witnesses pertains to the judicial power alone, and an attachment is defined in our Code of Criminal Procedure as a writ issued by a clerk of a court, or by any magistrate, or by the foreman of a grand jury, in any criminal action or proceeding authorized by law commanding some peace officer to take the body of a witness and bring him before such court, magistrate, or grand jury on a day named or forthwith to testify in behalf of the State, or of the defendant, as the case may be.

The bill, if it becomes law, would vest authority in the district or county attorney, who is properly an executive officer, to issue writs of attachment without limitation, and without any safeguard whatsoever, upon his own pleasure, under which writs the citizen may be seized by peace officers, and transported from his home and business, and confined by them in jail, in order to testify as to some offense, real or imaginary, about which he is supposed to possess some knowledge. Under our laws, very guarded restrictions and regulations are imposed on our courts in the issuance of this writ, especially when

the witness is desired by the defendant; and I can see no good reason why the limitations of the Constitution should be stretched to invest an officer whose functions are executive with a power so dangerous. Besides I am at a loss to understand what recourse the district or county attorney would have in cases of recalcitrant witnesses after the attachment had performed its function. If the witness should refuse to testify, when brought before the attorney, the law is silent as to the application of a remedy, and the witness could refuse to testify with perfect immunity, and in defiance of the officer issuing the writ.

Second—The expense of our courts is already a most serious burden upon our treasury, and the administration of the laws threaten us now with public bankruptcy; apart from the expenditure by the State, the funds of the counties are absorbed, frequently before collection, in the payment of jurors and other court expenses; and the compensation provided by law for attached witnesses in criminal cases, already amounts annually to an immense sum, which threatens to increase each year.

Instead of allowing district and county attorneys at their unbridled pleasure to issue writs of attachment, and thus increase this extravagant expenditure, I think we should re-examine our present laws upon this subject, with a view of ascertaining whether or not by judicious amendment some serious leaks from the treasury may be stopped.

These burdens arising from the administration of the laws are becoming so intolerable that we already hear clamors and protests from the people who pay the taxes; and unless we can find some method to reduce these expenses we may expect such a revulsion in public sentiment as may seriously cripple our courts and bring them into disrepute.

To avoid such a calamity, we should apply a reasonable corrective in advance of such a culmination. I have thus discharged the unwelcome duty of respectfully stating my objections to this bill, with which I cheerfully submit the whole subject for your further deliberation and judgment.

I. S. Ross,
Governor.